

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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HEATH VINCENT FULKERSON,

Case No. 3:20-cv-00399-MMD-CLB

Plaintiff,

ORDER

v.

ALLSTATE INSURANCE,

Defendant.

**I. SUMMARY**

*Pro se* Plaintiff Heath Fulkerson (“Plaintiff” or “Fulkerson”) filed a complaint against Defendant Allstate Insurance alleging property liability and insurance bad faith related to two separate incidents on Plaintiff’s late father’s property. (ECF No. 1-1 (“Complaint”).) Plaintiff also filed an application to *proceed in forma pauperis* (ECF No. 1), along with a motion to submit his Complaint (ECF No. 1-2 (“Submission Motion”).) Defendant has moved to dismiss Plaintiff’s Complaint. (ECF No. 7 (“Dismissal Motion”).)<sup>1</sup>

Before the Court is the Report and Recommendation (ECF No. 10 (“R&R”)) of United States Magistrate Judge Carla L. Baldwin. The R&R recommends the Court deem Plaintiff a vexatious litigant, this case be dismissed, and Plaintiff’s *in forma pauperis* application along with his Submission and Dismissal Motions be denied as moot. (*Id.* at 1.) Plaintiff filed a “reply” to Judge Baldwin’s R&R, which the Court will interpret as an objection to the R&R. (ECF No. 11 (“Objection”).)<sup>2</sup> Additionally, Plaintiff’s

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<sup>1</sup>Plaintiff did not file a response to Defendant’s Dismissal Motion. In any event, Defendant was not required to file any responsive pleading because the Court has not directed the Complaint to be filed and served.

<sup>2</sup>Plaintiff’s objection to the R&R and his request for a change of venue were filed in the same motion. Plaintiff’s Objection and his Venue Motion thus appear respectively as ECF Nos. 11 and 12 on the docket.

1 Objection appears to request a change of venue, which the Court will treat as a motion  
2 to transfer venue. (ECF No. 12 (“Venue Motion”).)

3 The Court will overrule Plaintiff’s Objection because the Court agrees with Judge  
4 Baldwin’s recommendations, and will fully adopt the R&R. Additionally, the Court denies  
5 Plaintiff’s Venue Motion as there is insufficient factual or legal basis to grant the Motion.

## 6 **II. BACKGROUND**

7 The Court incorporates by reference Judge Baldwin’s recitation of the factual  
8 background of this case (ECF No. 10 at 4) and the list of (22) cases Fulkerson has filed  
9 in this Court (*id.* at 5-6), and does not recite it here.

## 10 **III. PLAINTIFF’S OBJECTION**

### 11 **A. Review of the Magistrate Judge’s Recommendation**

12 The Court “may accept, reject, or modify, in whole or in part, the findings or  
13 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
14 timely objects to a magistrate judge’s report and recommendation, the Court is required  
15 to “make a *de novo* determination of those portions of the [report and recommendation]  
16 to which objection is made.” *Id.* Because of Plaintiff’s Objection to the R&R (ECF No.  
17 11), the Court undertakes a *de novo* review of it.

### 18 **B. Failure to State a Claim**

19 Judge Baldwin recommends that Plaintiff’s Complaint be dismissed for failure to  
20 state a claim and because Plaintiff has not shown he has standing to bring this action.  
21 (ECF No. 10 at 4-5.) Plaintiff counters that his case is “brought on factual grounds” and  
22 “his claim brought has factual basis.” (ECF No. 11 at 1.) However, a *de novo* review of  
23 Plaintiff’s Complaint reveals that Plaintiff’s factual allegations are indeed—as Judge  
24 Baldwin determined—“conclusory, vague, and ambiguous.” (ECF No. 10 at 4.) Rule  
25 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint contain “a short  
26 and plain statement of the claim showing that the pleader is entitled to relief.” *Bell*  
27 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Here, Plaintiff’s  
28 Complaint fails to show Defendant acted in bad faith and Plaintiff is entitled to relief. Nor

1 does the Complaint establish that Plaintiff has standing to bring this action. The Court  
2 agrees with Judge Baldwin's recommendation that the Complaint be dismissed.

3 **C. Vexatious Litigant**

4 Judge Baldwin's R&R recommends that Plaintiff be deemed a vexatious litigant  
5 and be "enjoined from filing any further action or papers in the district without first  
6 obtaining leave of the Chief Judge of this court." (ECF No. 10 at 5-8.) Plaintiff's  
7 Objection does not address this recommendation. The Court need only "make a de  
8 novo determination of those portions of the [report and recommendation] to which  
9 objection is made." 28 U.S.C. § 636(b)(1). However, a court must approach the fact of  
10 declaring a litigant vexatious with caution and pre-filing orders to that effect "should  
11 rarely be filed." *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990).

12 The Ninth Circuit has provided guidelines for courts to apply before ordering pre-  
13 filing restrictions. *Id.* at 1146-48. First, to be compliant with the requirements of due  
14 process, a court must provide the litigant with notice and "an opportunity to oppose the  
15 order before it is entered." *Id.* at 1147. Second, to ensure adequate review, a court must  
16 provide "a listing of all the cases and motions that led the district court to conclude that  
17 a vexatious litigant order was needed." *Id.* Third, the district court must make  
18 "substantive findings as to the frivolous or harassing nature of the litigant's action." *Id.* at  
19 1148 (citation omitted). Finally, a vexatious litigant order "must be narrowly tailored to  
20 closely fit the specific vice encountered." *Id.*

21 Here, Judge Baldwin's R&R provided Plaintiff with notice and the objection  
22 process gave Plaintiff an opportunity to oppose the R&R and this order. Plaintiff forwent  
23 his opportunity in not raising his opposition in his Objection. Judge Baldwin's citation to  
24 22 different cases in the District of Nevada where Plaintiff is a *pro se* litigant (ECF No.  
25 10 at 5-7), establishes a case list on the record that leads the Court to conclude a

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1 vexatious litigant order is needed.<sup>3</sup> As Judge Baldwin correctly noted, these cases were  
 2 dismissed based on lack of jurisdiction, failure to state a claim, duplicative, or because  
 3 they were frivolous. (*Id.* at 6-7.) These cases show Plaintiff's "activities [are] numerous"  
 4 and "abusive." *De Long*, 912 F.2d at 1147. Moreover, the Court agrees with Judge  
 5 Baldwin that "[r]equiring Plaintiff to seek leave prior to filing new lawsuits is narrowly  
 6 tailored because he will still have access to this court by requesting leave." (ECF No. 10  
 7 at 8.) See *Tagle v. Dep't of Homeland Sec.*, Case No. 2:15-cv-02506-APG-VCF, 2019  
 8 WL 2305155, \*1 (D. Nev. May 30, 2019) (requiring a vexatious litigant to seek leave of  
 9 court before filing any additional actions). For the foregoing reasons, the Court agrees  
 10 with Judge Baldwin and adopts the R&R in its entirety.

#### 11 **IV. VENUE**

12 Plaintiff asks for a transfer of venue "due to the Cvourt [*sic*] being prejudicial and  
 13 violating his right to a fair court case" (ECF No. 12 at 1), because of "the inequalities  
 14 and rampid [*sic*] violations" of his rights. (*Id.*) For Plaintiff to transfer venue, two  
 15 requirements must be met on its face: "(1) that the district to which [Plaintiff] seeks to  
 16 have the action transferred is one in which the action 'might have been brought,' and (2)  
 17 that the transfer be for the convenience of parties and witnesses, and in the interest of  
 18 justice." *Amazon.com v. Cendant Corp.*, 404 F. Supp. 2d 1256 (W.D. Wash. 2005)  
 19 (citing 28 U.S.C. § 1404(a)). Plaintiff's Venue Motion does neither. Plaintiff has failed to  
 20 meet his burden of proof. See *Amini Innovation Corp. v. JS Imports, Inc.*, 497 F. Supp.  
 21 2d 1093, 1109 (C.D. Cal. 2007) ("The burden is on the moving party to establish that a  
 22 transfer would allow a case to proceed more conveniently and better serve the interest  
 23 of justice."). The Court thus denies Plaintiff's Venue Motion.

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27 <sup>3</sup>Judge Baldwin additionally took judicial notice that Plaintiff has also made filings  
 28 in the Second Judicial District Court for the State of Nevada, U.S. District Court for the  
 Northern District of California, and the Ninth Circuit. (*Id.* at 7.)

**V. CONCLUSION**

It is therefore ordered that the Report and Recommendation of Magistrate Judge Carla L. Baldwin (ECF No. 10) is accepted and adopted in full.

It is further ordered that Plaintiff's objection (ECF No. 11) is overruled.

The Court declares that Heath Vincent Fulkerson is a *vexatious litigant*. The Court invokes its inherent authority under 28 U.S.C. § 1651(a) to enjoin and prohibit Fulkerson from filing any complaint, petition, or other document in this Court without first obtaining leave of this Court. In order to file any papers in this Court, Fulkerson must first file an application for leave. The application must be supported by a declaration of Fulkerson stating: (1) that the matters asserted in the new complaint or papers have never been raised and disposed of on the merits by any court; (2) that the claim or claims are not frivolous or made in bad faith; and (3) that Fulkerson has conducted a reasonable investigation of the facts and investigation supports Fulkerson's claim or claims. A copy of this order declaring that Fulkerson is a vexatious litigant must be attached to any application submitted to this Court. Failure to comply with these instructions will be sufficient grounds for denial of an application.

It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is denied as moot.

It is further ordered that Plaintiff's complaint (ECF No. 1-1) be filed.

It is further ordered that Plaintiff's complaint (ECF No. 1-1) is dismissed for failure to state a claim.

It is further ordered that Plaintiff's motion to submit (ECF No. 1-2) his complaint is denied as moot.

It is further ordered that Defendant's motion to dismiss (ECF No. 7) is denied as moot.

It is further ordered that Plaintiff's motion to transfer venue (ECF No. 12) is denied.

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1 The Clerk of Court is directed to close the case and enter judgment accordingly.

2 DATED THIS 25<sup>th</sup> Day of November 2020.

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7 CHIEF UNITED STATES DISTRICT JUDGE  
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